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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :
et al., :
Plaintiffs :
v. : No. 1:23-cv-00108
GOOGLE, LLC, :
Defendants. :
:

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Monday, August 21, 2023

Video Deposition of CHRISTOPHER KOEPKE,
taken at the Law Offices of Paul, Weiss,
Rifkind, Wharton & Garrison LLP, 2001 K St NW,
Washington, DC, beginning at 9:35 a.m. Eastern
Standard Time, before Ryan K. Black, Registered
Professional Reporter, Certified Livenote
Reporter and Notary Public in and for the
District of Columbia

Job No. CS6043164

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1 APPEARANCES:		1 THE VIDEOGRAPHER: Good morning. We are
2		2 going on the record at 9:35 a.m. on August 21st,
3 UNITED STATES DEPARTMENT OF JUSTICE		3 2023. Please note that the microphones are
4 ANTITRUST DIVISION		4 sensitive and may pick up whispering and private
5 BY: KATHERINE CLEMONS, ESQ		5 conversations. Please mute your phones at this
6 VICTOR LIU, ESQ		6 time. Audio and video recording will continue to
7 ALVIN CHU, ESQ		7 take place unless all parties agree to go off the
8 MARK SOSNOWSKY, ESQ - Via Zoom		8 record.
9 450 5th Street, NW		9 This is Media Unit 1 of the
10 Washington, DC 20530		10 video-recorded deposition of Mr. Christopher
11 202 514 2414		11 Koepke in the matter of United States, et al.,
12 katherine.clemons@usdoj.gov		12 versus Google, LLC, filed in the United States
13 victor.liu@usdoj.gov		13 District Court Eastern District of Virginia
14 alvin.chu@usdoj.gov		14 Alexandria Division, Case Number
15 mark.sosnowsky@usdoj.gov		15 1:23-cv-00108-LMB-JFA.
16 Representing - The United States of America		16 My name is Orson Braithwaite,
17		17 representing Veritext Legal Solutions, and I'm
18		18 the videographer. The court reporter is Ryan
19		19 Black, from the firm Veritext Legal Solutions.
20		20 Counsel will now state their appearances
21		21 and affiliations for the record.
22		22 MS. GOODMAN: Martha Goodman, from Paul
23 ALSO PRESENT:		23 Weiss, on behalf of Google LLC.
24 Orson Braithwaite - Legal Videographer		24 MS. MILLIGAN: Heather Milligan, also on
25 Kenneth Whitley - Department of Health and Human		25 behalf of Paul Weiss, for Google.
26 Services		
	Page 3	Page 5
1 I N D E X		1 MS. CLEMONS: Katherine Clemons, with
2 TESTIMONY OF: CHRISTOPHER KOEKPKE	PAGE	2 the Department of Justice, on behalf of the
3 By Ms Goodman	6	3 United States of America, CMS and the witness.
4 E X H I B I T S		4 MR. LIU: Victor Liu, also with the
5 EXHIBIT DESCRIPTION PAGE		5 Department of Justice, on behalf of the United
6 Exhibit 65 a document Bates Numbered		6 States and CMS.
7 CMS-ADS-11906 through 11974	117	7 MR. CHU: Alvin Chu, on behalf of United
8 Exhibit 66 a document Bates Numbered		8 States.
9 CMS-ADS-23248 through 23337	136	9 MR. WHITLEY: Kenneth Whitley, Office of
10 Exhibit 67 a document Bates Numbered		10 General Counsel, Department of Health and Human
11 CMS-ADS-59892 through 59893	151	11 Services.
12 Exhibit 68 a document Bates Numbered		12 MS. GOODMAN: And could the folks
13 CMS-ADS-593107 through 593110	167	13 attending remotely please state your presence?
14 Exhibit 69 a document Bates Numbered		14 MR. SOSNOWSKY: Mark Sosnowsky,
15 CMS-ADS-183807 through 183811	181	15 Department of Justice, and I will be in and out
16 Exhibit 70 a document Bates Numbered		16 of this deposition remotely. So if you lose me,
17 CMS-ADS-529199 through 529200	190	17 please don't -- you can continue.
18 Exhibit 71 a document Bates Numbered		18 THE VIDEOGRAPHER: Thank you.
19 CMS-ADS-189390	251	19 Would the court reporter please swear in
20 Exhibit 72 a document Bates Numbered		20 the witness?
21 CMS-ADS-64968 through 64971	258	21 * * *
22 Exhibit 73 a document Bates Numbered		22 Whereupon --
23 CMS-ADS-440295	265	23 CHRISTOPHER KOEKPKE,
24 Exhibit 74 a document Bates Numbered		24 called to testify, having been first duly sworn
25 CMS-ADS-531032 through 531072	268	25 or affirmed, was examined and testified as
26 Exhibit 75 a document Bates Numbered		
27 CMS-ADS-569654 through 569667	273	

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1	follows: * * *	1 healthcare programs. When we need people, 2 citizens of America to take an action, it is my 3 job to do outreach to help them know what actions 4 they need to take. I could probably go on for 5 the rest of the day with details on that.
3	EXAMINATION	6 Q. I'm sure we'll get to it. How long have 7 you been the director -- is the strategic 8 marketing -- strike that.
4	BY MS. GOODMAN:	9 Is the Strategic Marketing Group abbreviated SMG?
5	Q. Good morning, Mr. Koepke.	10 A. Yes, it is.
6	A. Good morning.	11 Q. Okay. How long have you been director of SMG?
7	Q. Have you been deposed before?	12 A. Approximately nine to ten years.
8	A. I think once. I'm not exactly sure it was a formal deposition, --	13 Q. And prior to serving as director of SMG, what -- what job did you have, if any?
9	Q. Okay.	14 A. I was the deputy director of the 15 Creative Services Group in the Office of 16 Communications at the Centers for Medicare and 17 Medicaid Services.
10	A. -- but yes.	18 Q. And how long were you the deputy 19 director of the Creative Services Group?
11	Q. Was there a court reporter taking down 12 everything you were saying?	20 A. I would say three to four years.
13	A. No, there was not.	21 Q. In your role as director of SMG, who do 22 you report to?
14	Q. Okay. So in this deposition, 15 it's important that you allow me to finish my 16 question before you answer, because our court 17 reporter, Mr. Black, is taking down everything 18 we're saying --	23
19	A. All right.	24
20	Q. -- and he can't take two people talking 21 at the same time. Okay?	25
22	A. All right.	
23	Q. So please let me finish my question 24 before you begin your answer. Okay?	
	Page 7	Page 9
1	A. Okay.	1 A. I report to the deputy director of the 2 Office of Communications.
2	Q. Okay. And the court reporter also 3 cannot record nonverbal answers or half verbal 4 answers, like uh-huh or huh-uh, so please make 5 sure to speak in a -- answer the questions 6 verbally. Okay?	3 Q. And what is that individual's name?
3	A. Okay.	4 A. Mary Wallace.
4	Q. Okay. And I will assume that you 5 understand my questions unless you ask me for a 6 clarification. Okay?	5 Q. How long has Mary Wallace been the 6 person to whom you've -- who you report?
5	A. Okay.	7 A. Nine to ten years.
6	Q. Okay. And I will assume that you 7 understand my questions unless you ask me for a 8 clarification. Okay?	8 Q. And to whom does Ms. Wallace report?
7	A. Okay.	9 MS. CLEMONS: Objection; foundation.
8	Q. Okay. And is there any reason you're unable to 9 provide your truthful and accurate testimony here 10 today?	10 THE WITNESS: Many people, but the 11 administrator of CMS.
9	A. Okay.	12 BY MS. GOODMAN:
10	Q. And is there any reason you're unable to 11 provide your truthful and accurate testimony here 12 today?	13 Q. And who is the current administrator of 14 CMS?
11	A. No.	15 A. Chiquita Brooks-LaSure.
12	Q. Okay. What is your current title?	16 Q. And how long has Ms. LaSure been the 17 administrator at CMS?
13	A. Director of the Strategic Marketing 14 Group in the Office of Communications at the 15 Centers for Medicare and Medicaid Services.	18 MS. CLEMONS: Objection; foundation.
14	Q. And what are your responsibilities as 15 the director of the Strategic Marketing Group at 16 the Office of Communications at the Centers for 17 Medicare and Medicaid Services?	19 THE WITNESS: I don't know when she was 20 confirmed.
15	A. When -- this federal agency is 16 responsible for Medicare, Medicaid and other	21 BY MS. GOODMAN:
16		22 Q. Okay. How many administrators of CMS 23 have you worked under over the course of your 24 time as director of SMG?
17		25 A. I could give you an approximate number.

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Page 10		Page 12	
1	I'm sure I might be forgetting someone. Five or	1	Another is the Division of Digital Marketing.
2	six.	2	And the other one is the Division of Campaign
3	Q. And how about in the time period of 2019	3	Management.
4	to 2023, how many administrators have you worked	4	Q. Who is the head -- who is the division
5	under in that time period?	5	director of the Research Division?
6	A. There's one detail I can't remember, but	6	A. Clarese Astrin.
7	from confirmed administrators by the Senate would	7	Q. How long has Ms. Astrin been the
8	be two.	8	director of the Research Division?
9	Q. And what is the one detail you can't	9	A. I'm not sure exactly how many years it's
10	remember?	10	been.
11	A. Usually in between confirmed	11	Q. Can you approximate?
12	administrators there is a career administrator,	12	A. About 10 years.
13	and I cannot remember who that was or how many	13	Q. Okay. Who is the director of Digital
14	there were between the last two confirmed ones.	14	Marketing?
15	Q. Okay. And are the -- those career	15	A. Mark Krawczyk.
16	officials, are they serving in an acting	16	Q. How long has Mr. Krawczyk been the
17	capacity, in your experience?	17	director of Digital Marketing?
18	A. That is correct.	18	A. I'm not sure.
19	Q. And how many presidential	19	Q. Can you approximate?
20	administrations have you served under?	20	A. I can.
21	MS. CLEMONS: Objection; vague.	21	Q. What's your approximate --
22	THE WITNESS: Five.	22	A. Six to seven years.
23	BY MS. GOODMAN:	23	Q. Who is the director of the Campaign
24	Q. And are those both republican and	24	Management Division?
25	democratic administrations?	25	A. Barbara Johanson.
Page 11		Page 13	
1	A. Yes.	1	Q. And how long has Ms. Johanson been the
2	Q. Are you also an adjunct -- oh, strike	2	director of the Campaign Management Division?
3	that.	3	A. I'm not sure.
4	Who reports to you in your role as	4	Q. How about an approximation?
5	director of SMG?	5	A. Three years.
6	MS. CLEMONS: Objection; form.	6	Q. Prior to serving as director of the
7	THE WITNESS: Do you want the entire	7	Campaign Management Division, did Ms. Johanson
8	list of people or my immediate reports?	8	have a role in the SMG?
9	BY MS. GOODMAN:	9	A. Yes.
10	Q. Let's go with your direct reports,	10	Q. What was her role prior to becoming
11	please.	11	director of the Campaign Management Division?
12	A. Okay. There would be three division	12	A. She was an analyst within that division
13	directors, a special assistant, a deputy director	13	that she now directs.
14	and an office administrator.	14	Q. And who is the deputy director that
15	Q. And has that -- those one, two, three,	15	reports to you?
16	four, five -- have you always had six direct	16	A. Laura Salerno.
17	reports in your time as director of SMG?	17	Q. How long has she been the direct
18	A. I'm not sure.	18	-- deputy director at SMG?
19	Q. How about in the time period of 2019 to	19	A. I'm not sure.
20	2023, have you always had six direct reports?	20	Q. How about an approximation?
21	A. Yes.	21	A. Three to four years.
22	Q. Okay. Who are the -- what are the three	22	Q. Prior to being the deputy director, did
23	divisions which report up to you as director of	23	Ms. Salerno have a job in the SMG?
24	SMG?	24	A. Yes, she did.
25	A. One of them is the Division of Research.	25	Q. What was her role prior to becoming the

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<p style="text-align: right;">Page 62</p> <p>1 audiences, we are taking into consideration those 2 that are more mobile-reliant. And we direct our 3 contractors to place more mobile programmatic 4 ads.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. How does CMS go about placing 7 programmatic ads on desktop devices --</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. -- or in a desktop format?</p> <p>11 MS. CLEMONS: Objection; form.</p> <p>12 Foundation.</p> <p>13 THE WITNESS: The same.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And then same question as to video. How 16 does CMS go about placing programmatic video ads?</p> <p>17 MS. CLEMONS: Objection; form.</p> <p>18 Foundation.</p> <p>19 THE WITNESS: We think about our 20 audience, how they're gonna interact with the 21 information. And we direct our contractors to 22 place the ads accordingly.</p> <p>23 BY MS. GOODMAN:</p> <p>24 Q. Do you direct your contractors to use 25 any particular video -- programmatic provider --</p>	<p style="text-align: right;">Page 64</p> <p>1 data. And we develop mechanisms for people to 2 choose, for their own privacy. And we -- and we 3 then publish it.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. So is it accurate that I should be able 6 to find, publicly, any TPWA analysis for any 7 Google programmatic tool --</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. -- done by CMS?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. You said that one fact -- the 13 other factor is likelihood of reaching your 14 audience. How do you evaluate a programmatic 15 provider's likelihood of reaching your intended 16 audience?</p> <p>17 MS. CLEMONS: Objection to form.</p> <p>18 THE WITNESS: There are really two 19 factors, depending on the audience. Massive 20 reach is actually a very good factor. Another 21 is that there are some -- some programmatic 22 providers through which data can be used to try 23 to target specific audiences.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Who are the programmatic providers</p>
<p style="text-align: right;">Page 63</p> <p>1 MS. CLEMONS: Objection to form.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. -- for mobile, video or desktop?</p> <p>4 MS. CLEMONS: Same objection.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. What direction do you provide your 8 contractors with respect to the programmatic 9 providers CMS -- they should use on your behalf?</p> <p>10 MS. CLEMONS: Objection; form.</p> <p>11 THE WITNESS: There are two factors. 12 Programmatic providers that are likely to 13 reach our audience, and program -- programmatic 14 providers for whom we have done a privacy 15 analysis.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. What does the privacy analysis entail?</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: We -- the government as a 20 whole, and -- and we're very important to us, we 21 -- the finished product is what we call a TPWA, 22 Third-party WA. And it is published for everyone 23 to see and read.</p> <p>24 We go through a process of analyzing how 25 that company -- that programmatic company, uses</p>	<p style="text-align: right;">Page 65</p> <p>1 you're thinking of that -- through which data can 2 be used to try to target specific audiences?</p> <p>3 A. All of them. And they will develop 4 products that could be useful, or, more or less, 5 useful, for specific audiences.</p> <p>6 Q. I see. So are you aware of any 7 programmatic providers who are more useful at 8 serving a minority or diverse population as 9 compared to the general market?</p> <p>10 MS. CLEMONS: Objection; form.</p> <p>11 Foundation.</p> <p>12 THE WITNESS: There are those that 13 develop products for that purpose.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Can you think of any sitting here today?</p> <p>16 A. I don't see any of them sitting here 17 today.</p> <p>18 Q. I'm asking if you can -- can you name 19 any of these programmatic providers by name that 20 you're thinking of?</p> <p>21 A. Resonate.</p> <p>22 Q. What does Resonate do?</p> <p>23 MS. CLEMONS: Objection; form.</p> <p>24 THE WITNESS: I can't say I'm an expert 25 in everything the company does.</p>

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	Page 66	Page 68
1	BY MS. GOODMAN:	1 provider?
2	Q. What does Resonate do with assisting CMS	2 MS. CLEMONS: Objection to form.
3	in its programmatic advertising?	3 Foundation.
4	MS. CLEMONS: Objection; form.	4 THE WITNESS: We would invest in more
5	Foundation.	5 than one programmatic provider in an effort to
6	THE WITNESS: We have historically used	6 see how the return on investment goes across them
7	them for targeting Spanish-speaking audiences.	7 and to most efficiently use the taxpayer dollars.
8	BY MS. GOODMAN:	8 BY MS. GOODMAN:
9	Q. Any other examples of programmatic ad	9 Q. Have you heard of Huddled Masses?
10	providers that you can think of which CMS has	10 A. Yes.
11	used?	11 Q. Is that another programmatic provider
12	MS. CLEMONS: Objection to form.	12 CMS has used?
13	THE WITNESS: Yes.	13 A. Yes.
14	BY MS. GOODMAN:	14 Q. And why does CMS choose to use Huddled
15	Q. Which ones?	15 Masses relative to any other programmatic
16	MS. CLEMONS: Same objection.	16 provider?
17	THE WITNESS: MIQ.	17 MS. CLEMONS: Objection to form.
18	BY MS. GOODMAN:	18 THE WITNESS: We invest in more than
19	Q. And for what purpose do you use MIQ --	19 one pro -- programmatic provider so we can track
20	MS. CLEMONS: Objection to form.	20 their return on investment so we can best use
21	BY MS. GOODMAN:	21 taxpayer dollars -- be most efficient.
22	Q. -- relative to any other programmatic	22 BY MS. GOODMAN:
23	provider?	23 Q. How about Digitant? Have you heard that
24	A. There are two things that we would use	24 name before?
25	MIQ for relative to a programmatic provider. One	25 A. Yes, I have.
	Page 67	Page 69
1	is by investing in two different programmatic	1 Q. Is that a programmatic provider that CMS
2	providers, or more than one, we can track	2 has used?
3	their ROI, so we can use taxpayer dollars most	3 MS. CLEMONS: Objection; form.
4	efficiently. So we're not just locked into one	4 THE WITNESS: To the best of my
5	all the time. And MIQ has developed a product to	5 knowledge, yes.
6	try to identify, as best as possible, people who	6 BY MS. GOODMAN:
7	would make a good target who might be looking for	7 Q. And why does CMS choose to use Digitant
8	health insurance.	8 relative to any other programmatic provider?
9	Q. Can you think of any other programmatic	9 MS. CLEMONS: Objection; form.
10	providers that CMS has used besides MIQ and	10 THE WITNESS: We invest in Digitant as
11	Resonate?	11 we would other programmatic providers for the
12	MS. CLEMONS: Objection; form.	12 purpose of tracking the ROI and assessing who is
13	THE WITNESS: There are others, and at	13 providing the best return on investment for the
14	the moment I'm drawing a blank.	14 taxpayer.
15	BY MS. GOODMAN:	15 MS. CLEMONS: We've been on the record
16	Q. Okay. Have you heard the name the Trade	16 for about 90 minutes. Do you need a break or --
17	Desk?	17 THE WITNESS: I could use a little more
18	A. Yes.	18 water. Yeah. Probably the restroom then.
19	Q. Is that a programmatic provider you	19 MS. GOODMAN: Can I just ask a couple
20	recall CMS using?	20 more questions.
21	A. Yes.	21 THE WITNESS: Did you record that?
22	MS. CLEMONS: Objection to form.	22 MS. GOODMAN: Can I just finish with a
23	BY MS. GOODMAN:	23 few more other examples to see if you've heard of
24	Q. And do you know why CMS would choose the	24 them?
25	Trade Desk relative to any other programmatic	25 THE WITNESS: I feel -- I feel I can

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1	keep going.	1	used?
2	MS. CLEMONS: Okay.	2	MS. CLEMONS: Objection to form.
3	BY MS. GOODMAN:	3	THE WITNESS: Yes.
4	Q. Thank you. I appreciate it. And then	4	BY MS. GOODMAN:
5	we can take a break.	5	Q. And why has CMS used MNI relative to any
6	GumGum. Have you heard of GumGum?	6	other programmatic provider?
7	A. Yes.	7	MS. CLEMONS: Objection; form.
8	Q. Is that a programmatic provider CMS has	8	THE WITNESS: We invest in multiple
9	used.	9	programmatic providers so we can track their
10	MS. CLEMONS: Objection to form.	10	return on investment so we can see what is most
11	THE WITNESS: We usually use GumGum,	11	efficient at achieving our goals.
12	yes.	12	BY MS. GOODMAN:
13	BY MS. GOODMAN:	13	Q. Okay. And then can you think of any
14	Q. And how do you -- why does CMS use	14	Google programmatic services that CMS has used?
15	GumGum relative to any other programmatic	15	MS. CLEMONS: Objection; form.
16	provider?	16	THE WITNESS: Yes.
17	MS. CLEMONS: Objection; form.	17	BY MS. GOODMAN:
18	THE WITNESS: We invest in multiple	18	Q. Which ones?
19	programmatic providers so we can track their ROI,	19	A. Google Display Network and DV360.
20	their return on investment, to be as efficient as	20	Q. [REDACTED]
21	possible.	21	[REDACTED]
22	BY MS. GOODMAN:	22	MS. CLEMONS: Objection; form.
23	Q. And what about Adsmovil? Have you heard	23	THE WITNESS: [REDACTED]
24	of Adsmovil?	24	[REDACTED]
25	A. Yes.	25	
	Page 71		Page 73
1	Q. Is that a programmatic provider that CMS	1	[REDACTED]
2	has used.	2	[REDACTED]
3	MS. CLEMONS: Objection; form.	3	BY MS. GOODMAN:
4	THE WITNESS: Yes.	4	Q. Okay.
5	BY MS. GOODMAN:	5	A. [REDACTED].
6	Q. Why do you use Adsmovil relative to any	6	MS. GOODMAN: Okay. We can take a
7	other programmatic provider?	7	break.
8	MS. CLEMONS: Objection; form.	8	THE VIDEOGRAPHER: The time is 11:03
9	THE WITNESS: We use multiple	9	a m. This ends unit 1. We're off the record.
10	programmatic providers to track the return on	10	(Recess taken.)
11	investment on a particular campaign to be most	11	THE VIDEOGRAPHER: The time is 11:20
12	efficient to achieve our goals for the American	12	a m. This begins Unit Number 2. We're on the
13	taxpayer.	13	record.
14	BY MS. GOODMAN:	14	BY MS. GOODMAN:
15	Q. And last one. Have you heard of	15	Q. Mr. Koepke, have you -- can you think of
16	QuantiCast?	16	any other places CMS has placed ads that would be
17	A. Yes.	17	in the bucket of ads within a logged-in
18	Q. Is that a programmatic provider that CMS	18	experience?
19	has used?	19	MS. CLEMONS: Objection to form.
20	MS. CLEMONS: Objection; form.	20	THE WITNESS: Not off the top of my
21	THE WITNESS: I am not sure.	21	head.
22	BY MS. GOODMAN:	22	BY MS. GOODMAN:
23	Q. Okay. Have you heard of MNI?	23	Q. And another kind of digital ad we've
24	A. Yes.	24	discussed was OTT ads. Do you recall that?
25	Q. Is that a programmatic provider CMS has	25	A. Yes.

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1	Q. What -- what places has CMS placed OTT	1	who did not make it through the privacy analysis
2	ads?	2	and was not approved for use?
3	MS. CLEMONS: Objection to form.	3	MS. CLEMONS: Objection; form.
4	THE WITNESS: Hulu. I'm pulling a blank	4	Foundation.
5	on a couple of the others. Competitors to Hulu.	5	THE WITNESS: I am not.
6	BY MS. GOODMAN:	6	BY MS. GOODMAN:
7	Q. And do you know what mechanism CMS uses	7	Q. So we've talked about a variety of types
8	to place ads on Hulu or other competitors to	8	of digital ads, YouTube, programmatic mobile,
9	Hulu?	9	programmatic video, programmatic display, ads
10	MS. CLEMONS: Objection to form.	10	with publishers, website takeovers, ads within a
11	THE WITNESS: We provide direction to	11	logged-in experience, including Google Discovery,
12	our contractors to place ads on OTT to reach	12	Facebook, Instagram, Twitter and LinkedIn,
13	audiences of interest for our programs.	13	Search, including Google and Bing and
14	BY MS. GOODMAN:	14	over-the-top ads, including Hulu and competitors
15	Q. And do you provide any direction in what	15	of Hulu. How does CMS decide which of those
16	particular way to place OTT ads in order to reach	16	digital categories to use when making decisions
17	audiences of interest?	17	about advertising?
18	MS. CLEMONS: Objection to form.	18	MS. CLEMONS: Objection; form.
19	THE WITNESS: We provide direction as to	19	Foundation.
20	the tactics and the channels that will reach the	20	THE WITNESS: We consider the audience
21	audiences of our interest.	21	that we try to reach, the behavior we want them
22	BY MS. GOODMAN:	22	to do, and the size of the budget that we have at
23	Q. Do you -- do you direct them to use any	23	our disposal.
24	particular ad-buying tool in order to place ads	24	BY MS. GOODMAN:
25	on OTT?	25	Q. Anything else that you consider in
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1	MS. CLEMONS: Objection to form.	1	making a decision on which advertising -- digital
2	Foundation.	2	advertising category to use?
3	THE WITNESS: We do.	3	MS. CLEMONS: Objection; form.
4	BY MS. GOODMAN:	4	THE WITNESS: That might vary by
5	Q. And what ad-buying tools do you direct	5	campaign, but off the top of my head I can't say.
6	the ad agencies to use in order to place ads on	6	What I said was the most important.
7	OTT?	7	BY MS. GOODMAN:
8	MS. CLEMONS: Objection; form.	8	Q. Does CMS try to create an appropriate
9	THE WITNESS: I'm not sure.	9	mix of advertising across all of the categories
10	BY MS. GOODMAN:	10	that we've discussed?
11	Q. Okay. So how do you know that you	11	MS. CLEMONS: Objection; form.
12	direct them to use particular ad-buying tools?	12	THE WITNESS: What would be your
13	A. In our media plans, we approve the	13	definition of appropriate mix?
14	entire media plan, which included ad-buying	14	BY MS. GOODMAN:
15	tools.	15	Q. For whatever is -- CMS deems to be
16	Q. And do all of the ad-buying tools used	16	appropriate for a given campaign. So do you
17	by ad agencies for CMS need to go through the	17	decide to use multiple different channels, and,
18	privacy analysis that we talked about earlier?	18	if so, how do you make those decisions?
19	MS. CLEMONS: Objection; form.	19	MS. CLEMONS: Objection; form.
20	Foundation.	20	THE WITNESS: We assess the goal of
21	THE WITNESS: To the degree that there	21	the campaign, the audience that we're trying to
22	is a data exchange with our website. That's the	22	reach, how we can best reach them, and the amount
23	key.	23	of resources we have.
24	BY MS. GOODMAN:	24	BY MS. GOODMAN:
25	Q. Are you aware of any digital ad provider	25	Q. And in the course of those

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		Page 110	Page 112
1	But it demonstrated that the outreach resulted in	1	that could be the problem with my thinking, but
2	-- and this is the number I'm not -- but resulted	2	display advertising has actually appeared, in my
3	in many people getting health coverage.	3	memory, from best that I can recall, to become
4	BY MS. GOODMAN:	4	more impactful.
5	Q. As compared to the prior year?	5	Q. In what ways that you can recall has
6	A. We did not do Mixed Media Modeling the	6	display advertising become more impactful?
7	private -- prime -- the previous year, so as	7	A. Best of my recollection, return on
8	related to the number of uninsured people, --	8	investment appears to be higher.
9	Q. Got it.	9	Q. And what return on investment are you
10	A. -- the audience at that time. And other	10	tracking with respect to display advertising in
11	factors that could also increase enrollment.	11	the Open Enrollment campaigns?
12	Q. What are the other factors that could	12	MS. CLEMONS: Objection to form.
13	also increase enrollment to which you're	13	THE WITNESS: We have primarily three
14	referring?	14	methods for looking at the role of display.
15	A. For a set number of years, a law was	15	Method Number 1 is looking at the people who
16	passed that impacted the tax breaks that people	16	directly interact with the ad, so what we often
17	could get for having health insurance, thereby	17	call last-click attribution. Method Number 2 is
18	reducing their premiums for the health insurance.	18	multi-source attribution; still within the
19	Q. So over the time period at issue, or	19	digital realm. And Method Number 3 is the Mixed
20	that I'm focusing on in this case, 2019 to 2023,	20	Media Modeling.
21	it's fair to say that the budget available for	21	BY MS. GOODMAN:
22	advertising and outreach has increased, correct?	22	Q. And so in what ways has the return on
23	MS. CLEMONS: Objection; form.	23	investment according to those methods gotten
24	THE WITNESS: Yes.	24	higher? Like, what changes are you seeing in
25	BY MS. GOODMAN:	25	those metrics vis-a-vis return on investment?
		Page 111	Page 113
1	Q. Okay. And how have you, in the	1	MS. CLEMONS: Objection; form.
2	Strategic Marketing Group, made decisions about	2	Foundation.
3	how to spend those additional dollars over that	3	THE WITNESS: To the best of my
4	time period?	4	recollection, we are seeing an ability to
5	MS. CLEMONS: Objection; form.	5	attribute more application starts, and that is
6	THE WITNESS: We considered the audience	6	the number of people who would actually be
7	and how best to reach them, and we -- and we	7	applying for the tax break to help them pay for
8	distribute the funds accordingly.	8	their health insurance, and more enrolling due to
9	BY MS. GOODMAN:	9	display ads, to the best of my recollection.
10	Q. And what changes have you observed with	10	BY MS. GOODMAN:
11	respect to how best to reach the audiences you're	11	Q. Have you observed any changes with
12	trying to reach over the 2019 to '23 time period	12	respect to meeting the audience you're trying to
13	as part of the Open Enrollment campaigns?	13	reach with respect to video advertising in the
14	MS. CLEMONS: Objection; form.	14	2019 to '23 time period?
15	Foundation.	15	MS. CLEMONS: Objection; form.
16	THE WITNESS: I'm not sure the channel	16	THE WITNESS: I don't recall.
17	mix for most effectively reaching the audience	17	BY MS. GOODMAN:
18	during that time period, based on my observations	18	Q. Are there any other subtle changes that
19	of what would be best for reaching that audience,	19	you have observed over the 2019 to 2023 time
20	has changed significantly, more subtle changes.	20	period with respect to reaching the audience
21	BY MS. GOODMAN:	21	you're trying to reach for health -- Open
22	Q. And what are the subtle changes that you	22	Enrollment?
23	have observed?	23	MS. CLEMONS: Objection to form.
24	A. Over a time period, and this could be	24	THE WITNESS: I don't recall.
25	beyond the time period that you're mentioning, so	25	BY MS. GOODMAN:

29 (Pages 110 - 113)

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<p>1 Q. Okay. How about the -- have you 2 observed any changes in the availability of 3 advertising providers that you could use to reach 4 your audience over the 2019 to 2023 time period?</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 THE WITNESS: I don't recall.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. So earlier we talked about a lot of the 9 different programmatic providers that CMS has 10 used.</p> <p>11 A. Mm-hmm.</p> <p>12 Q. Do you recall that testimony?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Okay. With respect to those providers, 15 were they all available to CMS in the 2019 year 16 as compared to the 2023 year?</p> <p>17 MS. CLEMONS: Objection; form.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. Are you aware of any advertising 21 providers who were not available to CMS in 22 2019 but who are available to CMS in 2023?</p> <p>23 MS. CLEMONS: Objection to form.</p> <p>24 THE WITNESS: I am not.</p> <p>25 BY MS. GOODMAN:</p>	<p>Page 114</p> <p>1 best of my recollection, that type of display 2 ad has increased in its value to us.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And how does CMS go about -- what 5 methods does CMS use to place these kinds of 6 prospecting display ads?</p> <p>7 MS. CLEMONS: Objection to form.</p> <p>8 THE WITNESS: We direct our contractors 9 to do it on our behalf.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And do you direct them to use any 12 particular provider?</p> <p>13 MS. CLEMONS: Objection to form.</p> <p>14 Foundation.</p> <p>15 THE WITNESS: We will direct them to use 16 particular providers.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Okay. So with respect to the increasing 19 effectiveness of prospecting display ads, what 20 providers have you used?</p> <p>21 MS. CLEMONS: Objection to form.</p> <p>22 THE WITNESS: [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Which are those?</p>	<p>Page 116</p>
<p>Page 115</p>	<p>Page 117</p>	
<p>1 Q. Okay. So one of the subtle changes 2 that you said you observed was that display has 3 become more impactful, correct? And when you say 4 "display," can you be more detailed about what 5 kind of display advertising you mean that has 6 become more impactful as in having a higher 7 return on investment?</p> <p>8 MS. CLEMONS: Objection to form.</p> <p>9 THE WITNESS: So kind of display really 10 covers a lot of categories, because there's 11 creative, there's delivery systems, there's 12 targeted. Do you have anything particularly in 13 mind?</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. No. I want to understand what you mean 16 by "display being more impactful."</p> <p>17 A. All right.</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: So to the best of my 20 recollection, display ads that -- what we would 21 call -- I don't know. Let me see. I've gotta 22 think of the term here -- prospecting. So those 23 are the ads that go out and find people who could 24 benefit from the program, who may or may not have 25 ever interacted with the program before. To the</p>	<p>1 A. [REDACTED] 2 [REDACTED] 3 Q. Sure. 4 A. [REDACTED] 5 MS. GOODMAN: Shall we take a break for 6 lunch? 7 MS. CLEMONS: Yeah. 8 THE WITNESS: I'm good with whatever. 9 THE VIDEOGRAPHER: The time is 12:22 10 p.m. This ends Unit 2. We're off the record. (Lunch recess taken.) 11 (Exhibit No. 65, a document Bates 12 Numbered CMS-ADS-11906 through 11974, was 13 introduced.) 14 THE VIDEOGRAPHER: The time is 1:14 p.m. 15 This begins Unit Number 3. We're on the record. 16 BY MS. GOODMAN: 17 Q. Mr. Koepke, I'm going to hand you a 18 document marked Exhibit 65, CMS-ADS-11906 through 19 11974. 20 And this is a technical proposal from 21 Weber Shandwick for Healthcare.gov 2010 Open 22 Enrollment campaign, correct? 23 A. I'm not sure. It's going to take me a 24 minute to look at it.</p>	

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	Page 118	Page 120
1	Q. Sure.	1 Marketing Group" incorrectly. It sounded correct
2	A. It appears as such.	2 to me.
3	Q. Okay. And what is the purpose of a	3 BY MS. GOODMAN:
4	technical proposal, to your knowledge?	4 Q. Okay. I don't understand what the
5	MS. CLEMONS: Objection; form.	5 detail with respect to the Strategic Marketing
6	THE WITNESS: A technical proposal is	6 Group led you to say no to my question.
7	part of a contracting process. So the offerers,	7 MS. CLEMONS: Objection to form.
8	which are the different ad agencies who might be	8 BY MS. GOODMAN:
9	interested in contracting with the federal	9 Q. Can you explain that to me?
10	government, would write a technical proposal to	10 A. Your question had three parts: Have I
11	show their abilities to meet the standards that	11 ever read a technical proposal. Is it about
12	the federal government has set forward.	12 advertising. And is it for the Strategic
13	BY MS. GOODMAN:	13 Marketing Group at CMS. I guess that's four
14	Q. And did multiple different contractors	14 parts.
15	compete each year for the Open Enrollment	15 The Strategic Marketing Group did not
16	campaign, or was it only Webber Shandwick?	16 exist when I read the technical proposals.
17	MS. CLEMONS: Objection to form.	17 Q. When did you read the technical
18	THE WITNESS: Each year?	18 proposals?
19	BY MS. GOODMAN:	19 MS. CLEMONS: Objection to form.
20	Q. Each year.	20 THE WITNESS: The early 2000s.
21	A. Okay. It was not always only Weber	21 BY MS. GOODMAN:
22	Shandwick, to the best of my knowledge. I'm	22 Q. So since the early 2000s, is it accurate
23	actually not a hundred percent sure, but -- so I	23 that you have not read the strat -- the technical
24	don't know.	24 proposals submitted by ad agencies?
25	Q. Okay. As the director of the Strategic	25 MS. CLEMONS: Objection to form.
	Page 119	Page 121
1	man -- Marketing Group, did you review technical	1 THE WITNESS: The technical proposals
2	proposals?	2 are written by -- are read and judged by trained
3	A. No, I did not.	3 staff who work for me.
4	MS. CLEMONS: Objection to form.	4 BY MS. GOODMAN:
5	THE WITNESS: I'm so sorry.	5 Q. Okay. And so your trained staff read
6	BY MS. GOODMAN:	6 and review them, but you do not; is that correct?
7	Q. Have you ever had occasion to read	7 A. That is correct.
8	them?	8 Q. Okay. Do you discuss the technical
9	MS. CLEMONS: Objection to form.	9 proposals with your staff?
10	THE WITNESS: Have I ever had the	10 A. I do not.
11	occasion to read a technical proposal of any	11 Q. Why not?
12	sort?	12 A. Because it is inappropriate for people
13	BY MS. GOODMAN:	13 judging a technical proposal to talk with other
14	Q. Of -- related to any advertising	14 people about it in the process of an acquisition.
15	campaign handled by the Strategic Marketing Group	15 Q. Why is that improper or inappropriate?
16	at CMS.	16 A. I would only be doing conjecture, but
17	A. You had a lot of very specific details	17 it's -- the government has a goal to be fair to
18	in that question that would lead me to say no.	18 all businesses. And so, therefore, the people
19	Q. What are the specific details in my	19 who read the proposals and judge them are doing
20	question that would lead you to say no?	20 so in a non-biased sense. And discussing with
21	A. One of them was the "Strategic Marketing	21 anyone else could -- could increase or add bias
22	Group."	22 to a process.
23	Q. Did I state that incorrectly?	23 Q. And which of your staff reviewed
24	MS. CLEMONS: Objection to form.	24 technical proposals for the Healthcare.gov Open
25	THE WITNESS: You did not say "Strategic	25 Enrollment campaigns in the '19 to '23 time

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Page 138		Page 140
1 Q. Yes.		1 MS. CLEMONS: Objection; form.
2 What "record-breaking enrollment"		2 Foundation.
3 occurred in OE9, if any?		3 THE WITNESS: So prospecting is a series
4 MS. CLEMONS: Objection; foundation.		4 of ads that are sent out to a broader public
5 THE WITNESS: I did not write this, so I		5 that fit our target audience to talk about
6 am not certain what they meant by it.		6 Healthcare.gov. Retargeting ads are ads from
7 BY MS. GOODMAN:		7 people who have been to our website, then
8 Q. Are you aware of any records being		8 receiving an ad reminding them of when the
9 broken with respect to OE9?		9 deadline's coming, things like that.
10 A. In OE9, we had excellent enrollment		10 BY MS. GOODMAN:
11 success.		11 Q. Over the course of your tenure in the
12 Q. How did you attain excellent enrollment		12 Strategic Marketing Group, have display ads
13 success in OE9?		13 always been able to do re -- to achieve a
14 MS. CLEMONS: Objection; form.		14 retargeting purpose?
15 THE WITNESS: By understanding our		15 MS. CLEMONS: Objection; form.
16 audience and what motivates them, and delivering		16 Foundation.
17 the campaign to help them understand the value of		17 THE WITNESS: Yes.
18 Healthcare.gov's plans for them.		18 BY MS. GOODMAN:
19 BY MS. GOODMAN:		19 Q. Okay. Have their capabilities at
20 Q. Did Google assist in any way in		20 retargeting improved over the course of your
21 obtaining ex -- excellent enrollment success in		21 tenure in the Strategic Marketing Group?
22 OOE9?		22 MS. CLEMONS: Objection; form.
23 MS. CLEMONS: Objection; form.		23 THE WITNESS: I think the concept of how
24 Foundation.		24 they work for retargeting ads is very similar in
25 THE WITNESS: Google was, in OE9, a		25 the entire --
Page 139		Page 141
1 media partner that was part of the mix that		1 BY MS. GOODMAN:
2 helped us obtain our excellence.		2 Q. Okay.
3 BY MS. GOODMAN:		3 A. -- nine to 10 years.
4 Q. Do you have any recollection of Google		4 Q. How about with respect to prospecting
5 assisting in any particular way in obtaining your		5 ads, have display ads capabilities at prospecting
6 excellence in OE9?		6 an audience improved over the course of your
7 A. Specifics would be a little difficult		7 tenure in the Strategic Marketing Group?
8 for me to remember right now; however, delivery		8 MS. CLEMONS: Objection; form.
9 of display ads, search ads, are two ways that I'm		9 THE WITNESS: It's not a question I ask
10 certain. And, most likely, video ads, as well.		10 myself. And as a person who likes to look at
11 Q. And can you please turn to Page 259?		11 data to think about it, it's not a question I've
12 A. I'll try to remember to read the header		12 tracked over the last 10 years as a -- you know,
13 this time.		13 as an industry.
14 Q. This one should be easy. Top of the		14 So in the general sense of the question
15 page. Well, the paragraph at the top of the		15 that you asked, I'd have to say I don't know.
16 page.		16 BY MS. GOODMAN:
17 A. See, you're -- you're changing it		17 Q. Okay. In the second paragraph here on
18 already.		18 Page 259, can you read the first sentence?
19 Q. Where it says Display Media.		19 A. [REDACTED]
20 A. I see Display Media.		20 [REDACTED]
21 Q. Okay. It says, "Display media will		21 [REDACTED]
22 play an important role for both prospecting and		22 [REDACTED]
23 retargeting audiences." What is your		23 Q. What do you understand that sentence to
24 understanding of the difference between		24 mean based on your experience as the director of
25 prospecting and retargeting audiences?		25 the Strategic Marketing Group?

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<p style="text-align: right;">Page 142</p> <p>1 MS. CLEMONS: Objection; foundation. 2 THE WITNESS: Given the context of 3 that sentence, it is an argument written by the 4 company seeking business from us, that this 5 would be a tactic that they were successful 6 at improving the tactic to -- that we were 7 successful at improving the tactic from OE -- now 8 I forgot if I'm looking at -- ah, from OE8 to 9 OE9, yes.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And you said you're somebody who likes 12 to look data; is that correct?</p> <p>13 A. That is correct.</p> <p>14 Q. And you do, in fact, like to look at 15 data?</p> <p>16 A. I do, in fact, like to look at data.</p> <p>17 Q. Do you recall ever seeing any data about 18 the efficiency of Google's in-market for health 19 insurance targeting capability between OE8 and 20 OE9?</p> <p>21 MS. CLEMONS: Objection; form.</p> <p>22 THE WITNESS [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. [REDACTED]</p>	<p style="text-align: right;">Page 144</p> <p>1 MS. CLEMONS: Objection; form. 2 THE WITNESS: I do.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 MS. CLEMONS: Objection; form. 14 Foundation.</p> <p>15 THE WITNESS: Over the course of the 16 entire 10 years in this position have I seen that 17 sentence -- data -- data like that sentence 18 -- now, I haven't been reading that sentence 19 obviously. So I think what you're asking 20 -- could you please repeat the question? I'm 21 sorry. I'll put words in your mouth, and that's 22 not right.</p> <p>23 BY MS. GOODMAN:</p> <p>24 Q. [REDACTED]</p> <p>25 [REDACTED]</p>
<p style="text-align: right;">Page 143</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 MS. CLEMONS: Objection; form. 6 Foundation.</p> <p>7 THE WITNESS: The only reason I would 8 doubt -- and, to be clear, this is because I'm a 9 person who likes to confirm all the time -- is 10 that people make mistakes, drawing a conclusion 11 that they summarize in one sentence from a set of 12 data over two years; and in the enthusiasm of 13 writing a proposal for business, that -- that can 14 also create interpretation of data.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. Mm-hmm.</p> <p>17 A. So I would confirm. It's the kind of 18 person I am. I'm not suggesting that anyone 19 actually did make a mistake here, or that I would 20 know that they've made a mistake. I would just 21 confirm. It's the type of person I am.</p> <p>22 Q. [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">Page 145</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 MS. CLEMONS: Objection; form. 11 Foundation.</p> <p>12 THE WITNESS: [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. [REDACTED].</p> <p>16 A. [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 Q. Okay.</p> <p>22 A. [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 Q. [REDACTED]</p>

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<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 MS. CLEMONS: Objection; form.</p> <p>5 Foundation.</p> <p>6 THE WITNESS: [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 MS. CLEMONS: Objection; form.</p> <p>15 Foundation.</p> <p>16 THE WITNESS: I would say -- I think the</p> <p>17 simple answer is I don't know.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. Okay. Can you turn to page ending in</p> <p>20 261? Under OE10 Base Task 1, the last sentence</p> <p>21 of the paragraph reads, "Performance channels</p> <p>22 like display and social media will be optimized</p> <p>23 in realtime to drive email signup and enrollment</p> <p>24 conversions." Do you see that?</p> <p>25 A. I do.</p>	<p>Page 146</p> <p>1 Q. Okay. And then in the middle of</p> <p>2 paragraph it states, "We will continue to partner</p> <p>3 with Google where we have continuously seen</p> <p>4 efficient engagement and reach among individuals</p> <p>5 who are in the market for health insurance."</p> <p>6 What do you understand that sentence to mean in</p> <p>7 your capacity as the director of the Strategic</p> <p>8 Marketing Group?</p> <p>9 MS. CLEMONS: Objection; foundation.</p> <p>10 Form.</p> <p>11 THE WITNESS: That CMS will work with</p> <p>12 Weber Shandwick to purchase display services from</p> <p>13 Google in the next Open Enrollment period.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And what connection, if any, does that</p> <p>16 have to this efficient engagement that Weber</p> <p>17 Shandwick has continuously seen with Google?</p> <p>18 MS. CLEMONS: Objection; foundation.</p> <p>19 THE WITNESS: In this case, we would</p> <p>20 have to talk to the person who wrote the proposal</p> <p>21 to get their full understanding of that.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. In your experience, has CMS continuously</p> <p>24 seen efficient engagement and reach using Google</p> <p>25 products or services?</p>
<p>1 Q. Okay. What do you understand that</p> <p>2 sentence to mean?</p> <p>3 MS. CLEMONS: Objection; foundation.</p> <p>4 THE WITNESS: I didn't write the</p> <p>5 sentence. But if I used the sentence, I would</p> <p>6 mean it to mean, as we've already talked about</p> <p>7 optimization, as you -- maybe we'll talk about it</p> <p>8 again -- that channels like display, like display</p> <p>9 and social media, so not only display and social</p> <p>10 media, will be optimized in realtime to drive two</p> <p>11 of our main goals, which is email signup or</p> <p>12 enrollment conversions.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. And is an example of realtime</p> <p>15 optimization moving money between display and</p> <p>16 social media channels?</p> <p>17 MS. CLEMONS: Objection; form.</p> <p>18 Foundation.</p> <p>19 THE WITNESS: It could be.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Okay. Can you turn to Page 264?</p> <p>22 Under the Channel and Placement Overview</p> <p>23 section on this page, five paragraphs down begins</p> <p>24 Display Media. Do you see where I am?</p> <p>25 A. Yes.</p>	<p>Page 147</p> <p>1 MS. CLEMONS: Objection to form.</p> <p>2 THE WITNESS: I would say we have seen</p> <p>3 significant reach, and we -- I don't generally</p> <p>4 use the term "efficient engagement," so I would</p> <p>5 not say that.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. What term would you use instead of</p> <p>8 "efficient engagement"?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 Foundation.</p> <p>11 THE WITNESS: I'd have to understand</p> <p>12 what they mean by "efficient engagement" in order</p> <p>13 to say what term I would use for that.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Okay. So do you have an un -- any</p> <p>16 understanding of what "efficient engagement"</p> <p>17 means in this sentence?</p> <p>18 A. It would be purely conjectural on my</p> <p>19 part.</p> <p>20 Q. Okay. Can you turn to Page ending in</p> <p>21 269?</p> <p>22 A. Yes.</p> <p>23 Q. In the paragraph under Driving Media</p> <p>24 Value and Savings, the author states that "They</p> <p>25 will work closely with Magna, the centralized</p>

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Page 150		Page 152
1	IPG network resource that provides marketplace	1 Q. I'm handing you Exhibit 67,
2	intelligence, investment strategies and	2 CMS-ADS-59892 through 59893.
3	negotiation innovation for agency teams and	3 A. Thank you.
4	clients." Do you see that?	4 Q. You're welcome.
5	A. I do.	5 And this is an email you received on
6	Q. Okay. This paragraph also says,	6 November 24th, 2020; is that correct?
7	"Magna harnesses the aggregate power of all IPG	7 MS. CLEMONS: Objection; foundation.
8	media investments, 23 billion in the U.S. and	8 THE WITNESS: This is an email that was
9	42.6 billion worldwide, and utilizes powerful	9 sent on 11-24-2020 at 3:06 in the afternoon.
10	insights, market forecasts and strategic	10 BY MS. GOODMAN:
11	relationships to provide marketplace advantage."	11 Q. And it was sent to you at that time,
12	Do you see that?	12 correct?
13	A. I do.	13 A. I am in the To line.
14	Q. Okay. What do you understand this	14 Q. Do you have any reason to doubt that you
15	paragraph to mean with respect to the services	15 received this message?
16	Magna provides?	16 A. And your definition of received is?
17	MS. CLEMONS: Objection; form.	17 Q. What's your definition of received?
18	Foundation.	18 A. Opened, read, processed the information.
19	THE WITNESS: I read this as sales	19 Q. What is your practice with respect to
20	boilerplate from a corporation trying to	20 opening, reading and processing the information
21	demonstrate a tool of a type that we request	21 in every email that you -- that is sent to you?
22	for media planning.	22 A. I do --
23	BY MS. GOODMAN:	23 MS. CLEMONS: Objection; form.
24	Q. What kind of -- what tool do you request	24 THE WITNESS: I do not have one practice
25	for media planning that you're referring to in	25 for every email that is open -- that is sent to
Page 151		Page 153
1	your answer?	1 me.
2	MS. CLEMONS: Objection.	2 BY MS. GOODMAN:
3	Mischaracterizes the witness's testimony.	3 Q. What are your general practices with
4	THE WITNESS: We expect our advertising	4 respect to emails that are sent to you?
5	agencies to have tools that evaluate reach	5 MS. CLEMONS: Objection to form.
6	of different channels. And even closer than	6 Foundation.
7	channels, which would be different television	7 THE WITNESS: My general practices vary
8	programs, for instance, so a finer level of	8 depending on where the email came to and who else
9	detail, to understand as we're planning a media	9 was addressed on it.
10	buy whether or not we are likely to hit the	10 BY MS. GOODMAN:
11	audiences where we are targeting.	11 Q. Okay. Can you please describe in more
12	BY MS. GOODMAN:	12 detail how your general practices vary depending
13	Q. And then of the last -- second-to-last	13 on who the email came to and who else was
14	sentence says, "In addition, we have strategic	14 addressed on it?
15	partnerships with Google, NBCU, Warner Media,	15 MS. CLEMONS: Objection; form.
16	Disney, Amazon and Roku." Do you know what	16 THE WITNESS: I get many cold call
17	"strategic partnership" is being referred to	17 emails from media companies, and those would be
18	here with Google?	18 the lowest priority that I -- that I look at.
19	A. My understanding would be conjecture.	19 They're sales emails. It's, like, whether JC
20	Q. Okay.	20 Penney sends you a sales email.
21	MS. GOODMAN: Can I have Tab 26?	21 I get emails that are addressed to my
22	(Exhibit No. 67, a document Bates	22 staff on the projects that they are running, and
23	Numbered CMS-ADS-59892 through 59893, was	23 I attend to them as I can based on how busy I am
24	introduced.)	24 that day.
25	BY MS. GOODMAN:	25 Then I have emails that are addressed to

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1 So we are trying to figure that out. 2 Q. When you say, "when we explicitly said 3 not to use that network," what -- what networks 4 are you referring to? 5 A. I'm going to get the names wrong, so 6 please forgive me. But there are different 7 products, if you will, that Google offers for 8 placing video ads, and I just can't think of the 9 names of them right now. It's late afternoon. 10 The -- and not even caffeine will bring that back 11 alive right now. But when looking at our ad buys 12 and the different possibilities, we instructed 13 Weber and Weber instructed Google to not use the 14 one that ProPublica's talking about. Because 15 it's not all YouTube ads and all YouTube 16 placements that are a problem. It's this one 17 product line. 18 And -- and we have discovered that they 19 actually did place some ads there. 20 Q. Okay. What -- what discussions have you 21 had with Google salespeople about this issue? 22 MS. CLEMONS: Objection to form. 23 THE WITNESS: We've had -- I'll say I 24 have had one meeting with them. It was their 25 desire to explain to us their take on the story.	1 name Sean Harrison? 2 A. Yes. 3 Q. Is he somebody that you've met with from 4 Google? 5 A. Yes. 6 Q. Was he at this ProPublica meeting, we'll 7 call it? 8 A. I'm not sure. There's about four people 9 from Google, and I'm just -- sorry. 10 Q. Okay. Have you ever met Sean Harrison? 11 A. Unless I'm getting my Seans mixed up, 12 which is a hundred percent possible, I would say 13 yes. 14 Q. Okay. Under what circumstances did you 15 meet with Sean Harrison from Google? 16 A. If I'm talking about the right Sean, so 17 I say -- I realize that I could be mis -- so when 18 Michelle sets up the meetings, she invites Shawn 19 at times. 20 Q. Can you -- sitting here today, do you 21 recall any specific -- any particular meeting 22 that you and Sean Harrison were at together? 23 A. I -- I wish I could pull it up on my 24 -- on my email so I'd make sure I'm -- we're 25 talking about the same Sean. But, if we are, he
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1 BY MS. GOODMAN: 2 Q. Who from Google did you meet with? 3 A. I do not know all the names of people. 4 I know the person who set it up. 5 Q. Who is that? 6 A. Her last name -- boy, I'm trying to 7 think of her first name now. She is our main 8 sales contact. H-i-n-k-e [sic] would be her last 9 name. 10 Q. Okay. 11 A. Oh my goodness. Michelle. 12 Q. And did that take place -- did that 13 meeting that you're recalling take place in 14 January of 2023, to the best of your 15 recollection? 16 A. No, it did not take place in January of 17 2023. 18 Q. When did it take place, to the best of 19 your recollection? 20 A. Sometime in the last three months. 21 Q. Okay. 22 A. After the ProPublica report was 23 published. So that will at least give you that 24 end of the date. 25 Q. Okay. Do you know an individual by the	1 is a person who has access to and does analytics 2 of Google data that Google does not give us 3 access to do analytics for. And he would have 4 done some analytics at our request. 5 Q. Okay. Do you know an individual by the 6 name of Kunal Khanna from Google? 7 A. I do. 8 Q. And is that a person that you have had 9 occasion to communicate with relating to CMS's 10 advertising work with Google? 11 A. Yes. 12 Q. Do you have -- remember any meetings 13 with Mr. Khanna? 14 A. Yes. 15 Q. What meetings do you remember? 16 A. So he's been moved to another account, 17 and I don't remember exactly when that happened. 18 Michelle was his placement [sic]. But they were 19 of the same type. They -- Google definitely 20 reaches out to us as a -- as a client, which I 21 imagine they would think we're an important 22 client. And those meetings would be -- they 23 provide analytics that they did on their own on 24 our campaigns, usually to suggest that running 25 more ads on Google networks were a -- was a good

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<p>1 thing. And -- and just describe other products 2 and ask us what our goals are, and what have you, 3 so that they would have a better understanding 4 about how -- about how their products could be 5 used, because, of course, they're trying to sell 6 their products.</p> <p>7 Q. Did you find those meetings to be 8 valuable?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: Valuable in what way?</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. Valuable to the work that you do at CMS 13 in advertising.</p> <p>14 MS. CLEMONS: Objection; form.</p> <p>15 THE WITNESS: I find them valuable, in 16 part, because it's really interesting to me to 17 see how people do their work. And, yes, some of 18 the data analytics that we've actually requested 19 that they've done for us have been valuable.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Despite these meetings also being an 22 opportunity for Google to explain how their 23 products could be used, because, of course, 24 they're trying to sell their products, does CMS 25 still make an independent decision about which</p>	<p>1 including Google, have a policy that an ad should 2 not -- what's the word I'm looking for -- mimic 3 -- that's not the word I'm looking for, but it's 4 like that, mimic some other existing 5 organization, or mimic the government when you're 6 not the government, basically.</p> <p>7 So, you know, an ad that says they're 8 Medicare, and they're not actually Medicare, is 9 misleading to people, and there are a lot of 10 those ads on Google. And so when we find them, 11 we send them and they -- we have conversations 12 about that.</p> <p>13 Q. And what steps, if any, do you ask 14 Google to take with respect to these ads -- these 15 search ads you're describing?</p> <p>16 A. Take them down immediately. Asked for 17 some monitoring support. I've asked for it. 18 That is what I've asked for.</p> <p>19 Q. And what -- what has Google, in return, 20 provided to you with respect to these search ads?</p> <p>21 A. Google has taken ads down when we find 22 them, and that is Whac-A-Mole because anybody can 23 put up an ad on Google if they've got a credit 24 card. Google has created new policies about 25 taking out ads for health insurance, and have met</p>
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<p>1 advertising products or services to use?</p> <p>2 A. Absolutely, yes.</p> <p>3 Q. Okay. Anything else, sitting here 4 today, that you can recall about any 5 conversations you have had with any individual 6 from Google --</p> <p>7 MS. CLEMONS: Objection; form.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. -- relative to CMS's advertising?</p> <p>10 MS. CLEMONS: Same objection.</p> <p>11 THE WITNESS: That's a lot to try to 12 recall. So it -- true specifics? No. 13 Conversations? Yes.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Any other types of conversations, other 16 than what we've discussed which you recall having 17 with Google?</p> <p>18 A. Yes. Thank you.</p> <p>19 Q. You're welcome.</p> <p>20 A. In the search ad -- in the search ad 21 arena, Google accepts ads -- or has accepted ads, 22 from people who try to look like the government. 23 And we discover these ads sometimes. And every 24 time I see one, I would send it to Kunal, to 25 Michelle. And -- because most digital companies,</p>	<p>1 with us about those policies.</p> <p>2 Q. So is it fair to say that Google is 3 taking steps to address CMS's concerns with 4 respect to search ads that mimic the government?</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 THE WITNESS: It is fair to say Google 7 has taken steps with regard to search ads.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. How about with respect to display ads? 10 Are you aware of any conduct on the part of 11 Google with respect to display ads that has 12 negatively impacted CMS's advertising?</p> <p>13 MS. CLEMONS: Objection to form. And I 14 would caution the witness not to -- to answer the 15 question if your answer would reveal privileged 16 communications with counsel.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Are you able to answer that question?</p> <p>19 A. No.</p> <p>20 Q. Prior to having any conversation with 21 any lawyer with respect to Google Ads, any lawyer 22 from the government, did you ever have any 23 concerns that Google was engaging in 24 anticompetitive conduct related to display 25 advertising?</p>

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1	MS. CLEMONS: Objection to form. Calls	1	BY MS. GOODMAN:
2	for a legal conclusion.	2	Q. -- who charge on such a basis, to your
3	THE WITNESS: No.	3	knowledge?
4	BY MS. GOODMAN:	4	MS. CLEMONS: Same objection.
5	Q. And prior to any conversation with any	5	THE WITNESS: There are other providers.
6	lawyer for the government, did you ever have any	6	BY MS. GOODMAN:
7	concerns that Google was causing CMS to pay more	7	Q. And do you have the same concerns with
8	for display advertising than it should have been	8	respect to providers other than Google who charge
9	paying?	9	on a cost-per-impression basis?
10	A. Could you rephrase that, please -- or	10	MS. CLEMONS: Objection to form.
11	not rephrase. Just repeat it. That's what I	11	THE WITNESS: Yes.
12	meant. I'm so sorry.	12	BY MS. GOODMAN:
13	Q. That's okay.	13	Q. Okay. Has anybody at any advertising
14	A. I used the wrong word.	14	agency with whom CMS works ever told you that
15	Q. Prior to any conversation with any	15	Google was engaging in anticompetitive conduct
16	lawyer for the government, did you ever have any	16	related to display advertising?
17	concerns that Google was causing CMS to pay more	17	A. Not that I recall.
18	for display advertising than it should have been	18	Q. Okay. So sitting here today, and prior
19	paying?	19	to any conversation with any lawyer for the
20	MS. CLEMONS: Objection; form.	20	government, can you recall any concerns you've
21	THE WITNESS: The tough part here is	21	ever had with respect to Google's conduct and its
22	"should have been paying." That's an -- a really	22	affect on CMS's display advertising purchases?
23	-- that suggests a lot of information.	23	MS. CLEMONS: Objection to form.
24	That being said, yes.	24	THE WITNESS: Extremely informal
25	BY MS. GOODMAN:	25	conversations between me and my colleagues.
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1	Q. And what -- what concerns did you have	1	BY MS. GOODMAN:
2	with respect to Google causing CMS to pay more	2	Q. And what extremely informal
3	for display advertising than it should have been	3	conversations between you and your colleagues are
4	paying prior to any conversation with a lawyer	4	you referencing?
5	for the government?	5	A. Ones where we notice that all
6	A. It is possible -- in fact, indeed,	6	the digital ads that we place go through
7	probable, that when you are purchasing ads on a	7	double-click; that the analytics come through
8	cost-per-impression basis, that you're buying	8	Google analytics. There just seems to be a lot
9	things that are not useful to you.	9	of Google along the ways. And we've had those
10	Q. And so in what ways has Google, to your	10	comments, conversations and we just move on.
11	knowledge, caused you to buy things that are not	11	Because, in the end of the day, we're just doing
12	useful to you on a cost-per-impression basis?	12	our jobs.
13	And when I say you, I mean CMS.	13	Q. And have you rai -- ever raised those
14	MS. CLEMONS: Objection to form.	14	conversations with anybody outside of your
15	THE WITNESS: It has been a concern that	15	colleagues?
16	we have discussed. Whether it is -- the way you	16	MS. CLEMONS: Objection to the extent
17	put the question was, like, pure knowledge.	17	that question calls for privileged communications
18	Because other ways to potentially buy, which we	18	with counsel. If you're -- if you can answer
19	have not been able to do, would be to buy based	19	without referencing or being informed by
20	on outcomes instead of impressions.	20	privileged communications with counsel, you
21	BY MS. GOODMAN:	21	may do so.
22	Q. And is Google the only provider that you	22	THE WITNESS: Sorry. I'm just trying to
23	buy ads on an impression basis for, or are there	23	think and remember. It's mental gymnastics at
24	other providers --	24	this point. So --
25	MS. CLEMONS: Objection to form.	25	BY MS. GOODMAN:

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1	Q. So you can't answer -- you are unable	1 networks and talk about the price of what's
2	to answer that question without relying on	2 available.
3	privileged communications; is that correct?	3 BY MS. GOODMAN:
4	A. That is correct.	4 Q. And do you participate in discussions
5	Q. So you've never raised those concerns	5 between advertising agencies and any vendors over
6	with anybody at your advertising agencies, for	6 price for ad buys on behalf of CMS?
7	example. Is that accurate?	7 MS. CLEMONS: Objection to form.
8	A. As part of the informal conversations	8 THE WITNESS: We participate in
9	with colleagues, I can't recall.	9 conversations with the ad agencies over price and
10	Q. Okay. You referenced DoubleClick. What	10 what they've done to negotiate, and we provide
11	is DoubleClick?	11 direction when we think there's other
12	A. DoubleClick is a tool that allows us to	12 negotiations that should be done.
13	track ad performance and our websites together.	13 BY MS. GOODMAN:
14	Q. So it's a -- -- it's an -- a data	14 Q. Okay. But you -- but does any
15	monitoring tool. Is that accurate?	15 individual from CMS actually participate in the
16	A. From my understanding, that's partially	16 negotiations over price?
17	accurate. It's also a data-creating tool.	17 MS. CLEMONS: Objection to form.
18	Q. And Google Analytics, has CMS decided	18 Foundation.
19	not to use Google Analytics anymore --	19 THE WITNESS: To the extent that we
20	MS. CLEMONS: Objection; form.	20 direct our ad agencies on negotiating a price, we
21	BY MS. GOODMAN:	21 do participate.
22	Q. -- within the Strategic Marketing Group,	22 BY MS. GOODMAN:
23	at least?	23 Q. Okay. Beyond -- aside from the
24	A. The Strategic Marketing Group did not	24 extent to which you direct your ad agencies on
25	decide not to use Google Analytics.	25 negotiations a price, is there any other way in
	Page 227	Page 229
1	Q. Did somebody else decide not to use	1 which you participate in such negotiations? And
2	Google Analytics?	2 when I say "you," I mean CMS individuals.
3	MS. CLEMONS: Objection; form.	3 MS. CLEMONS: Objection to form.
4	Foundation.	4 Foundation.
5	THE WITNESS: By "somebody else,"	5 THE WITNESS: Our participation is
6	would -- could you give me a little more on that?	6 through the direction of those who work for us.
7	BY MS. GOODMAN:	7 BY MS. GOODMAN:
8	Q. Is the Strategic Marketing Group -- has	8 Q. Okay. The advertising purchases which
9	the Strategic Marketing Group transitioned from	9 your ad agency makes on behalf of CMS are part of
10	using Google Analytics to an Adobe product?	10 a bundle of services that the ad agency provides,
11	A. The Strategic Marketing Group is in the	11 correct?
12	process of that right now.	12 MS. CLEMONS: Objection; form.
13	Q. Okay. Why are you in that process now?	13 Foundation.
14	A. The people who manage the websites,	14 THE WITNESS: I'm not sure what you mean
15	which is different from the Strategic Marketing	15 by "bundle."
16	Group, made a decision to go from Google	16 BY MS. GOODMAN:
17	Analytics to the Adobe product.	17 Q. A group of services that the ad agency
18	Q. Okay. So under the agency -- the	18 provides includes buying ads, as well as other
19	CMS's contracts with advertising agencies, is it	19 services, correct?
20	accurate that the advertising agency negotiates	20 MS. CLEMONS: Objection to form.
21	the prices to be paid for advertising?	21 Foundation.
22	MS. CLEMONS: Objection to form.	22 THE WITNESS: I would say that we
23	Foundation.	23 contract with the ad agencies to help us
24	THE WITNESS: In an ad agency, there	24 implement our ad campaigns.
25	are buyers who get on the phones, like, with TV	25 BY MS. GOODMAN:

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1 and, two, that as the -- that advertisers, 2 therefore, have spent more money than might be 3 necessary in a noncompetitive -- in -- well, let 4 -- I screwed up my words. The advertisers, 5 therefore, spent more money than they would in a 6 competitive environment. 7 BY MS. GOODMAN: 8 Q. When did you read the complaint? 9 A. I -- 10 days ago. 10 Q. Did you have any occasion to read the 11 complaint in the course -- as re -- strike that. 12 Why didn't you read it sooner than 10 13 days ago? 14 A. And I'm really sorry, because I just 15 can't recall having read it before then. I am 16 -- I am certain I did, but I just don't know 17 when. So I gave you the answer that I know is 18 the most accurate, which is 10 days ago. 19 Q. Okay. 20 A. But I -- I apologize. I should have 21 said both. 22 Q. Okay. Do you recall whether the Center 23 for Medicare and Medicaid Services is referenced 24 at all in the complaint as a purchaser of 25 advertising?	1 may not be put in a document that I reviewed. 2 BY MS. GOODMAN: 3 Q. Okay. When did you first learn that you 4 would be involved in this lawsuit? 5 MS. CLEMONS: Objection to form. Also 6 caution the witness not to answer to the extent 7 that your answer would reveal the substance of 8 privileged communications with counsel. 9 BY MS. GOODMAN: 10 Q. And the question is when did you learn, 11 not from who, not how. It's simply when did you 12 learn you would be involved in this lawsuit. Can 13 you answer that question without relying on any 14 communications with lawyers? 15 A. Now I've got confused about the 16 question. Is it when I learned without relying 17 on -- on communications with lawyers, or when did 18 I learn and answer the question without relying 19 on communications by lawyers? 20 Q. Well, from my point of view, the 21 question is very simple. It doesn't at all 22 depend on communications with lawyers. And my 23 question to you is when did you learn that you 24 would be participating in this lawsuit? 25 MS. CLEMONS: Objection to form.
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1 A. I do not recall. 2 Q. Okay. Would it surprise you to learn 3 that CMS is not mentioned in the complaint? 4 MS. CLEMONS: Objection; form. 5 THE WITNESS: No, it would not surprise 6 me. 7 BY MS. GOODMAN: 8 Q. Why would it not surprise you to learn 9 that CMS is not mentioned in the complaint as a 10 purchaser of advertising even though you are 11 here sitting, providing testimony today, in your 12 capacity as the strategic marketing director for 13 CMS -- 14 MS. CLEMONS: Ob -- 15 BY MS. GOODMAN: 16 Q. -- about your digital advertising 17 purchases? 18 MS. CLEMONS: Objection to form. I will 19 caution the witness not to answer if your answer 20 would reveal the substance of privileged 21 communications with counsel. 22 THE WITNESS: The complaint lays out 23 arguments as to the monopoly status of Google. 24 And I'm not an expert in legal proceedings, so I 25 don't necessarily question why something may or	1 THE WITNESS: What is your definition of 2 "participation"? 3 BY MS. GOODMAN: 4 Q. Providing documents. Providing 5 information. Providing testimony. 6 A. I am not certain of the first time when 7 all of that was clear. If I was to do a paper 8 trail, I would say the document that you handed 9 would be a possible, which would suggest early 10 January. 11 Q. Okay. Which documents are you referring 12 to? 13 A. There's a series of them here in early 14 January that would suggest to me that during the 15 course of that time is when I learned. 16 Q. Okay. And it's possible that you 17 learned during that time, but you don't know for 18 certain? 19 A. I would go as far as saying probable. 20 Q. Why? 21 MS. CLEMONS: Objection. I'll instruct 22 the witness not to answer to the extent that your 23 answer would reveal the substance of privileged 24 communications with counsel. 25 BY MS. GOODMAN:

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1 Q. Are you able to answer that question?	1 providing -- telling them not to answer the
2 A. No.	2 question. So do you want to reconsider?
3 Q. Okay. Did you receive a litigation	3 MS. CLEMONS: I'm going to instruct
4 hold?	4 the witness not to answer a question that
5 A. Yes.	5 specifically asks what he did or did not speak
6 MS. CLEMONS: Objection. I'm going to	6 to the Department of Justice about.
7 instruct the witness not to answer that question.	7 MS. GOODMAN: Okay. Well, Counsel,
8 BY MS. GOODMAN:	8 obviously I reserve all of my rights to reask all
9 Q. Are you following that instruction?	9 of these questions of this witness, because they
10 A. Yes.	10 are not calling for privileged information, as
11 Q. To the extent you received a litigation	11 our motion makes clear.
12 hold, was it before or after January 24th, 2023?	12 BY MS. GOODMAN:
13 MS. CLEMONS: I'm going to object	13 Q. Prior to January -- have you ever spoken
14 that that calls for privileged information and	14 with anybody from a state attorney general office
15 instruct the witness not to answer.	15 about CMS's online advertising purchases?
16 BY MS. GOODMAN:	16 MS. CLEMONS: I'm going to instruct the
17 Q. Are you following that instruction?	17 witness not to answer to the extent that the
18 A. Yes, I am.	18 answer would reveal privileged communications
19 Q. Prior to 2000 -- January of 2023, did	19 with counsel. Otherwise, you may answer yes or
20 anybody from the Department of Justice ever reach	20 no.
21 out to you inquiring about CMS's online	21 THE WITNESS: No.
22 advertising purchases?	22 BY MS. GOODMAN:
23 A. I'm sorry. From where?	23 Q. Okay. And so even prior to January of
24 Q. Prior to January of 2023, did anybody	24 2023 you have never spoken with anybody from a
25 from the Department of Justice ever reach out to	25 state attorney general office about CMS's online
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1 you inquiring about CMS's online advertising	1 advertising purchases, correct?
2 purchases?	2 A. I believe my answer to the question
3 MS. CLEMONS: I'm going to instruct the	3 answered that.
4 witness not to answer to the extent that your	4 Q. So the answer is no, correct?
5 answer would be informed by privileged	5 A. Correct.
6 communications with counsel.	6 Q. Okay. Has anything about this lawsuit
7 BY MS. GOODMAN:	7 changed how CMS conducts its ad purchasing?
8 Q. Are you following that instruction?	8 MS. CLEMONS: I'm going to object to the
9 A. Yes, I am.	9 extent that question calls for information -- the
10 Q. So you have no independent recollection,	10 substance of communications of counsel or actions
11 one way or another, of whether anybody from the	11 taken at the direction of counsel. But if you
12 Department of Justice reached out to you about	12 can answer without reference to communications
13 CMS's online advertising purchases prior to	13 with counsel, you had may do so.
14 January of 2023?	14 THE WITNESS: No.
15 MS. CLEMONS: Again, I'm objecting to	15 BY MS. GOODMAN:
16 privilege -- on privilege grounds. Counsel is	16 Q. Has anything about this lawsuit changed
17 asking for the substance of communications with	17 whether you will use Google products or services
18 counsel, and I'm going to instruct the witness	18 in connection with CMS's advertising?
19 not to answer.	19 MS. CLEMONS: Same objection. Same
20 BY MS. GOODMAN:	20 instruction.
21 Q. Are you following that instruction?	21 THE WITNESS: No.
22 A. Yes, I am.	22 BY MS. GOODMAN:
23 MS. GOODMAN: Okay. Every other witness	23 Q. Do you use chat, like Teams chat,
24 that I've asked this question to has answered it	24 iMessage, other forms of chat for work purposes?
25 without an instruction of your colleagues	25 MS. CLEMONS: Objection to form.

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1	THE WITNESS: No, I do not.	1	MS. CLEMONS: Objection to form.
2	BY MS. GOODMAN:	2	THE WITNESS: It's basically an
3	Q. Okay. Does anybody within Strategic	3	irrelevant question for this top -- for this
4	Marketing Group use chat for work purposes, to	4	context. In my level of management, all emails
5	your knowledge?	5	are immediately archived.
6	MS. CLEMONS: Objection to form.	6	BY MS. GOODMAN:
7	THE WITNESS: I do not know.	7	Q. How do you know that?
8	BY MS. GOODMAN:	8	A. Because I've been informed it as a
9	Q. Okay. Do you ever use your personal	9	person in my level of management. I've been told
10	email for work purposes?	10	by the agency.
11	A. No.	11	Q. Who at the agency has told you that all
12	Q. Do you have a work-provided cell phone	12	of your emails are immediately archived?
13	or other mobile device?	13	A. That would have actually occurred in the
14	A. Yes.	14	email, and the exact person I don't know.
15	Q. Okay. Do you use that for work	15	Q. Okay. How about the position of the
16	purposes?	16	person?
17	A. Yes.	17	A. This is an org chart issue. It's either
18	Q. Okay. Do you know whether any documents	18	OIT or SORA.
19	have been collected from your personal devices	19	Q. Okay. And so notwithstanding the fact
20	-- I'm sorry, your mobile devices provided by	20	that somebody has told you all of your emails are
21	work for purposes of this litigation?	21	immediately archived, do you ever delete emails?
22	A. There are no documents on my mobile	22	MS. CLEMONS: Objection to form.
23	device.	23	THE WITNESS: I delete two types of
24	Q. Do you use -- is your mobile device an	24	emails.
25	iPad, an iPhone, an Android? What is it?	25	BY MS. GOODMAN:
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1	A. It's an iPhone.	1	Q. What are those?
2	Q. Okay. Do you use iMessage on your	2	A. The ones where my staff tell me they
3	iPhone for work purposes?	3	started work and ended work, which are only used
4	A. Not in relationship to advertising.	4	so I don't call them outside of that time, unless
5	Q. For what work purposes do you use	5	it's a real emergency. And the incredible load
6	iMessage on your iPhone?	6	of advertisements I get in my email.
7	A. To get a senior leader's attention who	7	Q. And since January of 2023, have you
8	didn't read an email where the substance of the	8	deleted any work emails?
9	work exists.	9	MS. CLEMONS: Objection to form.
10	Q. Could the substance of that email relate	10	THE WITNESS: Only of the style that
11	to advertising that you're trying to get a senior	11	I've talked -- mentioned.
12	leader's attention about?	12	MS. GOODMAN: Okay. Let's take a break.
13	MS. CLEMONS: Objection to form.	13	THE VIDEOGRAPHER: Time is 6:11 p.m.
14	THE WITNESS: Extremely unlikely.	14	We're off the record.
15	BY MS. GOODMAN:	15	(Recess taken.)
16	Q. But it's possible?	16	THE VIDEOGRAPHER: The time is 6:22 p.m.
17	A. No.	17	We're on the record.
18	Q. Why not?	18	MS. GOODMAN: I have no further
19	A. Advertising is a complex topic and,	19	questions at this time and reserve the remainder
20	therefore, requires a larger format to con -- to	20	of my time to ask the questions over which
21	converse on.	21	improper instructions not to answer have been
22	Also, I'm old school. I just like	22	provided.
23	email. It's all there. And it's there for you	23	Pass the witness.
24	now.	24	MS. CLEMONS: We have no questions,
25	Q. Do you ever delete emails?	25	although it is our position that the -- the

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<p>1 deposition is over and that Google does not have 2 grounds to hold the deposition open. 3 MS. GOODMAN: Okay. Thank you for your 4 time, Mr. Koepke. 5 THE WITNESS: It was my pleasure. This 6 was fun. 7 THE VIDEOGRAPHER: Time is 6:23 p m. 8 We're off the record. 9 (Deposition concluded -- 6:23 p m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 290</p> <p>1 Katherine Clemons Esq 2 Katherine.clemons@usdoj.gov 3 August 22nd, 2023 4 RE: United States, Et Al v. Google, LLC 5 8/21/2023, Christopher Koepke (#6043164) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 (erratas-cs@veritext.com). 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25</p>
<p>1 C E R T I F I C A T E 2 3 I do hereby certify that I am a Notary 4 Public in good standing, that the aforesaid 5 testimony was taken before me, pursuant to 6 notice, at the time and place indicated; that 7 said deponent was by me duly sworn to tell the 8 truth, the whole truth, and nothing but the 9 truth; that the testimony of said deponent was 10 correctly recorded in machine shorthand by me and 11 thereafter transcribed under my supervision with 12 computer-aided transcription; that the deposition 13 is a true and correct record of the testimony 14 given by the witness; and that I am neither of 15 counsel nor kin to any party in said action, nor 16 interested in the outcome thereof. 17 18 WITNESS my hand and official seal this 19 22nd day o 20 21 22 23 24 25</p> <p></p> <p>Notary Public</p>	<p>Page 291</p> <p>Page 293</p> <p>1 United States, Et Al v. Google, LLC 2 Christopher Koepke (#6043164) 3 E R R A T A S H E E T 4 PAGE ____ LINE ____ CHANGE _____ 5 _____ 6 REASON _____ 7 PAGE ____ LINE ____ CHANGE _____ 8 _____ 9 REASON _____ 10 PAGE ____ LINE ____ CHANGE _____ 11 _____ 12 REASON _____ 13 PAGE ____ LINE ____ CHANGE _____ 14 _____ 15 REASON _____ 16 PAGE ____ LINE ____ CHANGE _____ 17 _____ 18 REASON _____ 19 PAGE ____ LINE ____ CHANGE _____ 20 _____ 21 REASON _____ 22 _____ 23 _____ 24 Christopher Koepke Date</p>

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1 United States, Et Al v. Google, LLC

2 Christopher Koepke (#6043164)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Christopher Koepke, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10

11 _____

12 Christopher Koepke Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20___.
16

17

18 _____

19 NOTARY PUBLIC

20

21

22

23

24

25

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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